IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO. 42 OF 2006
IN
SUIT NO. 4913 OF 2000

Rashid Sattar Oomerbhoy .. Petitioner.

V/s.

Majid Ahmed Oomerbhoy .. Respondent.

Mr.J.Reis with Ms. T.A.Saria i/by S.K.Srivastava & Co., for the Petitioner.

Mr. E.P.Bharucha with Mr.Jariwala i/by M/s. Thakore Jariwala & Associates for the Respondent.

Mr.D.V.Deokar,1st Assistant to Court Receiver -present.

CORAM : A. S. OKA, J.

DATED : 19th OCTOBER, 2007.

P.C. :-

. I have heard the learned counsel for the petitioner and the learned senior counsel appearing for the respondent.

2. On 9th of January, 2007 this court issued a show cause notice in this contempt petition. In this petition, the petitioner has alleged that the respondent has committed a breach of the order dated 30th June, 2006 passed by this court. In paragraph 2 of the said

order dated 9th January, 2007, this court has recorded thus :

> "In my opinion, if in the opinion of the plaintiff-respondent, series of the orders that have been made by the Court directing the respondent to execute indemnity bond are not proper or legal or that those orders are incapable of being complied with , the remedy of the respondent was either to apply for modification of those orders or to challenge those orders in the appeal. What is pertinent to be noted is that the respondent neither challenges the orders nor seeks clarification of the orders or modification of the orders but simply refuses to comply with the order. The attitude adopted by the respondent, prima facie, is contemptuous."

3. Thus show cause notice was issued as the respondent- contemnor had failed to execute indemnity bond in terms of the aforesaid order of this court. Today, the respondent contemnor was personally present in the court. He has submitted two indemnity bonds dated 19th of October, 2007. The said indemnity bonds

have been handed over to the Court Receiver. The learned counsel appearing for the contemnor stated that one property in respect of which the receiver is appointed, namely, the Belgium Solvent Plant has not been identified by the Court Receiver as yet and as and when the said plant is identified, the respondent contemnor will submit indemnity bond in respect of the said plaint. The statement is accepted.

4. Thus, there is a substantial compliance with the orders passed by this court directing the respondent contemnor to furnish indemnity bond.

5. In response to the show cause notice, the respondent contemnor has filed an affidavit in which he has stated that his present age is more than 80 years and he has been suffering from acute asthma, arthritis and other ailments, which require constant medication at regular intervals and intermittent medical examination by specialist physicians. He has stated that he requires constant medical supervision and medication. In the said affidavit he has prayed for exemption from personal attendance in the court.

6. Today, the contemnor has filed another affidavit in which he has tendered an unconditional apology for

the delay in complying with the orders of this court. In the said affidavit he has set out that his present age is 82 years and he is suffering from many ailments.

7. The learned counsel appearing for the petitioner submitted that there is deliberate breach of the orders passed by this court on the part of the respondent contemnor. He, therefore, submitted that this is a fit case where the respondent should be ordered to pay heavy costs.

8. In the affidavits which are filed on the record, it is disclosed that the age of the respondent contemnor is 82 years and he is suffering from various ailments. He has also tendered an unconditional apology. It is not in dispute that there are large number of litigations pending in this court between the petitioner and the respondent, which are seriously contested by the parties. As stated earlier, now there is a substantial compliance made by the respondent contemnor and therefore, in my view, no further action is required to be taken against the respondent contemnor. However, the fact remains that there is a delay on the part of the respondent in complying with the order of this court. Therefore, I am directing the respondent contemnor to pay a sum of Rs. 15,000/- to the Maharashtra State

Legal Services Authority.

9. Hence, I pass the following order :

i. The apology tendered by the respondent contemnor is hereby accepted.

ii. Show cause notice issued by this court is discharged.

iii. The respondent -contemnor will pay a sum of Rs. 15,000/- to the Maharashtra State Legal Services Authority within a period of six weeks from today.

. Order accordingly. Contempt Petition is disposed of.

(A.S. OKA,J.)

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